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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ARVIND SHANKAR,

Plaintiff and Appellant,

v.

JEFFREY D. CHU,

Defendant and Respondent.

B231701

(Los Angeles County  
Super. Ct. No. BS111696)

APPEAL from an order of the Superior Court of Los Angeles County. Ramona G. See, Judge. Affirmed.

Arvind Shankar, in pro. per., for Plaintiff and Appellant.

Bird, Marella, Boxer, Wolpert, Nessim, Drooks & Lincenberg, Ekwan E. Rhow and Aparna S. Mathur for Defendant and Respondent.

Arvind Shankar, M.D., filed an acknowledgment of satisfaction of judgment on November 29, 2010, releasing “in full” judgment debtor Jeffrey D. Chu, M.D., with respect to a judgment entered on October 31, 2007 (the satisfaction of judgment). Later, on December 16, 2010, Shankar filed a memorandum of costs after judgment for \$3,447.44 (December 16 costs memorandum). Shankar appeals from the trial court’s order granting Chu’s motion to tax costs on Shankar’s December 16 costs memorandum in its entirety, claiming that the court erred by taxing costs that previously had been approved, taxing fees that initially had been waived, failing to consider “unusual circumstances” that prevented Shankar from filing a timely memorandum of costs, and refusing to set aside the satisfaction of judgment on the ground of surprise under Code of Civil Procedure section 473.<sup>1</sup>

We conclude the trial court did not err in refusing to set aside the satisfaction of judgment because Shankar did not file a properly noticed motion for relief under section 473, subdivision (b), and even if he had, he does not show “a judgment, dismissal, order, or other proceeding” was “taken against him” within the meaning of section 473, subdivision (b). And in any event, Shankar fails to show surprise required for relief under section 473, subdivision (b). Further, the court did not err in granting Chu’s motion to tax costs because the costs memorandum was served and filed untimely. Accordingly, we affirm the court’s order granting the motion to tax costs.

### **BACKGROUND**

On September 21, 2007, the Labor Commissioner awarded plaintiff Shankar, a medical doctor, \$49,440.55 in wages, interest, and other compensation from defendant Chu Sarang Medical, Inc. (CSM), and the award was entered as a judgment on October 31, 2007.<sup>2</sup> On Shankar’s appeal we reversed the order of the trial court denying Shankar’s motion to amend the judgment to add Chu as an additional defendant judgment debtor, as the alter ego of CSM and remanded to the trial court to consider the merits of

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<sup>1</sup> Undesignated statutory references are to the Code of Civil Procedure.

<sup>2</sup> CSM is not a party to this appeal.

the motion (*Shankar v. Chu Sarang Medical, Inc.* (Oct. 30, 2009, B211988) [nonpub. opn.]).<sup>3</sup>

On June 29, 2010, the trial court granted Shankar's motion to add Chu as a judgment debtor. Meanwhile, on February 26, 2010, Shankar had filed a memorandum of costs on appeal in the amount of \$1,827.50. The court granted in part Chu's motion to tax costs, ordering Shankar to recover costs of \$890.44. Chu did not object to Shankar's subsequent cost bill of \$98, resulting in total costs of \$988.44.

On September 17, 2010, Shankar obtained a writ of execution against Chu in the amount of \$65,012.63, which directed the levying officer to add interest at the daily rate of \$13.95 and to pay directly to the court clerk fees waived by Government Code section 68511.3 in the amount of \$25.<sup>4</sup> On October 19, 2010, Chu remitted a check to Shankar in the amount of \$66,018.09, which he represented to be "the total amount of the judgment, based on our calculations, with applicable costs and interest through October 19, 2010," and requested that Shankar file an acknowledgment of satisfaction of judgment.

Subsequently, Shankar and Chu exchanged correspondence regarding the calculation of the amount of Chu's indebtedness. On October 21, 2010, Shankar wrote to Chu confirming receipt of the check and requesting an explanation of how the amount of the check was calculated so that "we can assess how much should be refunded to Dr. Chu" before Shankar filed an acknowledgment of satisfaction of judgment. On October 28, 2010, Chu provided a computation and a report from the Los Angeles County Sheriff's Department of a collection and "Pending Payout[]" of \$4,754.98 to

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<sup>3</sup> On September 6, 2007, Chu and CSM filed an action in the Superior Court of Los Angeles County for damages, an accounting, and other equitable relief against Simon Hong, who was not a doctor, but who acted as CSM's agent and general manager, and Shankar, among others. (*Jeffrey C. Chu et al. v. Seong Wook Hong et al.* (Super. Ct. L.A. County, No. BC377123.) On about October 7, 2007, Shankar cross-complained against Chu and CSM for breach of contract, breach of fiduciary duty, wrongful termination of employment, and indemnity. That action is pending.

<sup>4</sup> Government Code section 68511.3 was repealed and Government Code section 68630 et seq. was added effective January 2009.

Shankar pursuant to the writ of execution. On November 3, 2010, Shankar wrote to Chu that he had not received any payment from the sheriff's department and that the check sent by Chu had cleared but was "slightly less than Dr. Chu's total indebtedness." On November 9, 2010, Shankar confirmed to Chu that he had received payment from the sheriff's department, deposited the check, and expected to serve an acknowledgment of satisfaction of judgment by the end of the week along with a spreadsheet calculating the amount of refund due to Chu. On November 16, 2010, Shankar provided a calculation of refund due to Chu of \$7,488.05, which included a spreadsheet itemizing costs from October 25, 2007, to November 12, 2010.<sup>5</sup>

On November 29, 2010, Shankar filed the satisfaction of judgment releasing judgment debtor Chu with respect to the judgment entered on October 31, 2007, and stating that the "[j]udgment is satisfied in full."

Later, Shankar filed the December 16 costs memorandum for a total of \$3,447.44, consisting of \$50 for preparing the abstract of judgment; \$75 for issuing a writ of execution; \$2,334 for filing, messenger, and service fees that had been previously waived by the trial court; and \$988.44 for "previously allowed postjudgment costs." The December 16 costs memorandum attached a spreadsheet of itemized costs from October 25, 2007, to November 12, 2010.

On December 17, 2010, Chu made a motion to tax the December 16 costs memorandum. In his opposition to Chu's motion to tax costs, Shankar requested that the trial court set aside the satisfaction of judgment under section 473, subdivision (b), claiming that Chu made a "surprise and sudden payment" when Shankar did not have sufficient information to file a complete memorandum of costs; and that Chu repeatedly requested Shankar to refund an overpayment by Chu during a time when Shankar's father suffered cardiac arrest, was hospitalized in intensive care, underwent emergency cardiac surgical procedures, and ultimately passed away.

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<sup>5</sup> According to Chu's December 17, 2010 motion to tax costs, Shankar refunded Chu \$7,646.05.

On February 14, 2011, the trial court granted Chu's motion to tax costs in the full amount of \$3,447.44 on the grounds that the December 16 costs memorandum was filed and served untimely. The court noted that Shankar had filed the December 16 costs memorandum after he filed the satisfaction of judgment on November 29, 2010, which stated that the "Judgment is satisfied in full." And the court denied Shankar's request to set aside the satisfaction of judgment under section 473, subdivision (b), stating that Shankar had failed to make a properly noticed motion and "no judgment, dismissal, order, or other proceeding" was taken against him.

Shankar appealed from the trial court's order granting Chu's motion to tax the December 16 costs memorandum.

### **DISCUSSION**

#### **Shankar has not shown that the trial court erred in granting Chu's motion to tax costs**

Shankar contends that the trial court erred by taxing costs that previously had been approved, taxing fees that initially had been waived, failing to consider "unusual circumstances" that prevented Shankar from filing a timely memorandum of costs, and refusing to set aside the satisfaction of judgment on the ground of surprise under section 473. We conclude the trial court did not err in refusing to set aside the satisfaction of judgment because Shankar did not file a properly noticed motion for relief under section 473, subdivision (b), and even if he had, he does not show "a judgment, dismissal, order, or other proceeding" was "taken against him" within the meaning of section 473, subdivision (b). And in any event, Shankar fails to show surprise required for relief under section 473, subdivision (b). Further, the court did not err in granting Chu's motion to tax costs because the costs memorandum was served and filed untimely.

Under section 473, subdivision (b), "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." California Rules of Court, rule 8.108(c), states that a noticed motion must be filed to vacate a judgment. (See Judicial Council of Cal.,

Advisory Com. com., reprinted at 2 Deering's Ann. Court Rules (2012 supp.) foll. rule 8.108, pp. 9596 [one of two statutory motions to vacate a judgment is "a motion to vacate a judgment because of mistake, inadvertence, surprise, or neglect . . . (§ 473, subd. (b))."].) Shankar did not file a noticed motion, but merely requested the trial court set aside the satisfaction of judgment in his opposition to Chu's motion to tax costs.

What is more, on appeal Shankar does not articulate a cogent argument or cite authority as to why his filing of the satisfaction of judgment was "a judgment, dismissal, order, or other proceeding taken against him" within the meaning of section 473, subdivision (b). (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545–546 [if appellant's brief does not contain a legal argument with a citation of authorities on the point made, the court need not furnish argument or search the record for support for appellant's contention but may treat it as forfeited and pass it without consideration].) Thus, Shankar has not shown that the trial court erred in refusing to set aside the satisfaction of judgment.

And in any event, Shankar fails to show surprise within the meaning of section 473, subdivision (b). (*Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1206 [surprise is "“some condition or situation in which a party . . . is unexpectedly placed to his injury, without any default or negligence of his own, which ordinary prudence could not have guarded against.”"].) His claim of surprise is based on the "surprise payment by [Chu] based upon an erroneous calculation by his counsel, and without any prior agreement as to the actual amount due"; the unexpected severe illness and death of his father; and the lack of necessary information required to prepare a final memorandum of costs. But notwithstanding Shankar's loss of his father, the record shows that correspondence between the two parties regarding the calculation of the amount remitted and an overpayment by Chu occurred over several weeks after Chu remitted a check to Shankar in the amount of \$66,018.09 on October 19, 2010. Ultimately, on November 16, 2010, Shankar provided Chu a calculation of refund due to Chu of \$7,488.05 and included a spreadsheet itemizing costs from October 25, 2007, to November 12, 2010. Shankar subsequently filed the satisfaction of judgment "in full" on November 29, 2010.

On this record, we cannot conclude that Shankar has shown he was surprised within the meaning of section 473, subdivision (b).

Further, the trial court did not abuse its discretion in concluding that the December 16 costs memorandum was filed and served untimely. (*Jewell v. Bank of America* (1990) 220 Cal.App.3d 934, 941 [“trial court’s exercise of discretion in granting or denying a motion to tax costs will not be disturbed if substantial evidence supports its decision”].)

Section 685.070, subdivision (b) provides in pertinent part: “*Before the judgment is fully satisfied* but not later than two years after the costs have been incurred, the judgment creditor claiming costs under this section shall file a memorandum of costs with the court clerk and serve a copy on the judgment debtor. Service shall be made personally or by mail.” (Italics added.) The record shows that Shankar filed the satisfaction of judgment on November 29, 2010. Thus, he did not file the December 16 costs memorandum, as required, before the judgment was fully satisfied. Although on appeal Shankar contends that the court erred in taxing costs that had been previously approved in Shankar’s February 26, 2010 costs memorandum as well as trial court fees that had been waived initially, we conclude that the filing of the satisfaction of judgment “in full” renders the later December 16 costs memorandum untimely.

Accordingly, we conclude that the trial court did not err in denying Shankar’s request to set aside the satisfaction of judgment and in granting Chu’s motion to tax costs.

**DISPOSITION**

The order is affirmed. Jeffrey D. Chu is entitled to costs on appeal.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

CHANEY, J.

JOHNSON, J.